

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION

KATHRYN BAUMAN RUBENSTEIN)
)
 Plaintiff,) CIVIL ACTION NO.
 v.) 1:07cv798-MHT
)
 BETTY JO BAUMAN, et al.,)
)
 Defendants.)

**MOTION TO DISMISS
OF DEFENDANT, PEOPLESOUTH BANK**

COMES NOW the defendant, PeoplesSouth Bank (“PeoplesSouth”), by and through its undersigned attorneys, and moves the Court pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure to dismiss this action against PeoplesSouth, and as grounds therefor submits the following:

1. The Federal Rules of Civil Procedure embody the concept of liberalized “notice pleading”; i.e., that a complaint need contain only a statement calculated to “give the defendant fair notice of what the plaintiff’s claim is and the grounds upon which it rests.” *Swierkiewicz v. Sorema, N.A.*, 534 U.S. 506, 512, 122 S.Ct. 992, 998, 152 L.Ed.2d 1 (2002); *Conley v. Gibson*, 355 U.S. 41, 47, 78 S.Ct. 99, 102, 21 Law 2nd 861 (1957). As to PeoplesSouth, Plaintiff’s Complaint fails to meet this minimum requirement.

2. Rule 8(a)(2) of the Federal Rules of Civil Procedure requires that a plaintiff make a short and plain statement of a claim showing entitlement to relief. See, *Hamilton v. Allen-Bradley Co.*, 217 F.3d 1321, 1325 (11th Cir.2000) (“[T]he form of the complaint is insignificant, even if it fails to categorize correctly the legal theory giving rise to the claim, **so long as the complaint alleges**

the facts on which relief can be granted.”); and *Roe v. Aware Woman Center for Choice, Inc.*, 253 F.2d 678, 683-684 (11th Cir.2001) ([W]hile notice pleading may not require that the pleader allege a ‘specific fact’ to cover every element or allege ‘with precision’ each element of a claim, **it is still necessary that a complaint ‘contain either direct or inferential allegations respecting all the material elements necessary to sustain a recovery under some viable legal theory.’ ”).**

3. An examination of the allegations set forth in Plaintiff’s “Causes of Action” reveals that the Plaintiff alleges no facts at all with respect to PeoplesSouth or even a general reference to any act, omission or wrongdoing of this Defendant, either directly or inferentially. Thus, Plaintiff’s Complaint fails to satisfy the even the minimal standard set by Rule 8(a)(2) insofar as this Defendant is concerned.

4. Rule 8(a)(3) requires that a complaint also contain “a demand for judgment for the relief the pleader seeks.” See, *Goldsmith v. City of Atmore*, 996 F.2d 1155, 1161 (11th Cir.1993) (“This requirement is not arduous - ‘any concise statement identifying the remedies and the parties against whom relief is sought will be sufficient,’ citing CHARLES A. WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE §1255 at 366 (2d ed. 1990)).

5. Again, Plaintiff’s “Prayer for Relief” makes no demand for relief as to PeoplesSouth or even a reference to PeoplesSouth. Plaintiff’s general demand for damages “against the Defendants” is insufficient to satisfy the requirement of Rule 8(a)(3), particularly since PeoplesSouth is not one of the “Defendants” identified in her “Causes of Action.”¹

6. In ruling on a Fed.R.Civ.P. Rule 12(b)(6) motion, “[d]ismissal is appropriate where it is clear the plaintiff can prove no set of facts in support of the claims in the complaint.” *Glover v.*

¹In fact, Plaintiff makes claims against only 31 of the 58 defendants named in her Complaint.

Liggett Group, Inc., 459 F.3d 1304, 1308 (11th Cir. 2006). In this case, because the Plaintiff did not plead any facts in support of a viable claim against PeoplesSouth or request any relief against PeoplesSouth, she failed to comply with the requirements of Fed.R.Civ.P. 8(a) and her Complaint is fatally flawed. Unquestionably, this Motion to dismiss PeoplesSouth as a defendant in this case pursuant to Fed.R.Civ.P 12(b)(6) for Plaintiff's failure to state a claim against PeoplesSouth is due to be granted.

Respectfully submitted this 14th day of September, 2007.

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CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of September, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/EMF system which will serve notification of such filing on the following:

None

I further certify that I have served the following by placing a copy thereof in the United States Mail, postage prepaid and properly addressed:

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